APPEAL NO. 032229
FILED OCTOBER 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing (CCH) was held on July 23, 2003. With regard to the disputed issues, the hearing officer determined in (Docket No. 1), that respondent 1's (claimant) compensable (strain/sprain) injury of (date of injury for Docket No. 1), does extend to and include an injury to the cervical spine and right shoulder, and that the claimant had disability from June 6, 2002, through the date of the CCH. With regard to (Docket No. 2), the hearing officer determined that the compensable injury of (date of injury for Docket No. 2), does not include an injury to the claimant's cervical spine and right shoulder after (date of injury for Docket No. 1).

The appellant (carrier 1) appeals the hearing officer's determinations that the (date of injury for Docket No. 2) injury extends to the cervical spine and right shoulder based on sufficiency of the evidence and that, because there is no new (date of injury for Docket No. 2) injury, there is no disability. The claimant responds, urging affirmance. The file does not contain a response from respondent 2 (carrier 2), the carrier that had coverage for the 1995 injury.

DECISION

Affirmed.

It is undisputed that the claimant, an operator, driver, and mover, sustained a compensable cervical injury on (date of injury for Docket No. 2). The claimant had three surgeries for that injury, the last being in June 1999 which included installing certain hardware including a "Songer cable." By all accounts the claimant recovered from the 1995 injury and resumed his preinjury work as a mover. On (date of injury for Docket No. 1), the claimant was helping unload an upright piano when he slipped on the ramp, with the piano hitting the claimant in the right shoulder and neck, and pushing the claimant to the ground. The claimant went to the emergency room on (date of injury for Docket No. 1), and then saw a number of doctors. The carrier has accepted a cervical sprain/strain injury. The hearing officer's decision contains a detailed summary of the findings of the various doctors. Although objective testing seemed to indicate the cervical fusion was still solid, at least one doctor wondered whether "the Songer cable has become some what irritative in nature." The doctor removed the cable and in a subsequent report wrote that "the patient sustained an injury on (date of injury for Docket No. 1) became symptomatic, and the surgery . . . which was a hardware removal, is clearly related to the (date of injury for Docket No. 1) surgery [sic]."

Carrier 1 contends that after the (date of injury for Docket No. 1), accident, medical evidence showed that the prior instrumentation and fusion remained stable and that the claimant had only sustained a sprain/strain. Carrier 1 advanced the novel

argument that the "[c]laimant failed to establish how the cable itself constituted a 'physical structure' of [the claimant's] body" as to give rise to an injury as defined in Section 401.011(26), and that pain alone does not amount to an injury. Carrier 1 also contends that the "shoulder surgery" was really a torn bicep tendon in the arm rather than shoulder surgery and that the hearing officer disregarded the report of a Texas Workers' Compensation Commission-required medical examination doctor, who opined that the "removal of hardware would be connected to the old injury of 1995 and not a new incident, as stated in 2002."

In any event, the medical evidence was conflicting, and Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). We decline to hold, as a matter of law, that spinal hardware does not constitute a physical structure of the body. With the evidence in conflict, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of insurance carrier 1 is **VANLINER INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. TOM SHIRLEY
2615 CALDER, SUITE 220
BEAUMONT, TEXAS 77702.

The true corporate name of insurance carrier 2 is **THE HOME INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Margaret L. Turner
Appeals Judge